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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,507	04/09/2004	David Hershberger	60,210-219	9822

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EXAMINER

GILBERT, ANDREW M

ART UNIT	PAPER NUMBER
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3767

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/821,507	<b>Applicant(s)</b> HERSHBERGER ET AL.	
	<b>Examiner</b> Andrew M. Gilbert	<b>Art Unit</b> 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 22-40 is/are pending in the application.
- 4a) Of the above claim(s) 23 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22, 24-29 and 31-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/9/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Acknowledgements***

1. This office action is in response to the reply filed on 3/27/2006.
2. The title of the application has been amended.
3. New drawings Figs 1, 31-38 and 42B-42H have been submitted as Replacement sheets providing indication of "PRIOR ART" drawings and reference numerals 348C, 352A, and 352B.
4. Furthermore, Applicant amended paragraph [0009], [0079], and inserted a new paragraph between paragraphs [0138] and [0139]. The amendments correct informalities and further describe the concave pumping wall 352 to identify and clarify structure shown in Figs 42A-42H. No new matter has been entered.
5. Applicant has cancelled claims 1-21 and added new claims 22-40 for consideration.

### ***Election/Restrictions***

6. In response to the election/restriction requirement filed on 3/27/2006 the Applicant cancelled pending claims 1-21 and filed new claims 22-40.
7. The Applicant elected Invention II (originally claims 12-18) directed to an insertable cassette. Additionally, the Applicant elected Species IV: Figs 42A-H **without** traverse. Upon entry of the amendment, the Applicant claims 22-40 are readable on Invention II and on elected Species IV.
8. However, Claims 23 and 30 are further withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a plate and biasing member

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respectively which draw on a nonelected species, there being no allowable generic or linking claim.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 22, 24-29, 31, 32-36, 38, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Lim et al (5927956). In reference to claims 22, 24-29, and 31, Lim et al discloses a tube set (10) for use with a surgical pump and tool system to supply irrigation fluid to a tool of the system, said tube set including an inlet tube (12) having first and second ends (Fig 1); an outlet tube (14) having first and second ends (Fig 1); a cassette (20), said cassette having a front, first and second spaced apart opposed sides that extend from said front, and a rear opposite said front that extends between said sides, said rear having a forwardly directed wall (Figs 1-3); a compressible tube (16) having opposed ends that extends across an outer surface of said forwardly directed wall, wherein said inlet tube second end is connected to one end of said compressible tube (Fig 1) and said outlet tube first end is connected to the other end of said compressible tube (Fig 1); and a locking finger (72) pivotally connected to said first side so as to be able to selectively be moved towards said second side (col 4, lns 5-8), said locking finger having a base (portion of 72 in contact with 60) pivotally connected to said

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first side adjacent said rear; a tip (end portion of 72; Fig 2) spaced from said base located adjacent said front and a retention feature (72, 87) located between said base and said tip; wherein said first side of said cassette is a side wall and said locking finger is formed integrally with said side wall and seats in an opening defined by said side wall (60; Fig 2, 4); wherein said locking finger retention feature extends beyond an outer surface of said locking finger (72, 87); wherein said locking finger retention feature is a tab (72) formed with a beveled top (87) such that extending from said base to said tip, the height of said tab relative to said locking finger increases (87); wherein said second side wall is formed with a recess (30, Fig 3) that is positioned to subtend the area subtended by said locking finger tip; a raised tab (87, 72) integral with said locking finger disposed over said tip, said tab being spaced from said retention feature (Fig 6); wherein said inlet tube, said outlet tube, and said compressible tube are separate tubes (Fig 1).

11. In reference to claims 32-36, 38, and 40, Lim et al discloses, a tube set (10) for use with a surgical pump and tool system, the surgical pump having a pumping mechanism for supplying irrigation fluid to a tool of the system, said tube set (10) including a compressible tube (16) having a first end and a cassette (20) supporting said compressible tube; said cassette including a pumping wall (28) with an outer surface (opposite side of 28) having a generally concave shape wherein said compressible tube is disposed adjacent to said generally concave outer surface (Fig 1, 6), said generally concave outer surface having an arcuate surface (surface of 28 between the two vertical double lines (ie - see 99; Fig 6) that defines a circular portion

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and a transition surface (the two portions to the respective left and right of the vertical double lines; to the left of 99; Fig 6) that extends away from said arcuate surface and said circular portion defined by said arcuate surface, wherein said compressible tube is capable of extending from said first end and over said transition surface to said arcuate surface when the pumping mechanism engages said compressible tube (Fig 6); wherein said transition surface defines a flat portion (the two portions to the respective left and right of the vertical double lines; to the left of 99; Fig 6) such that spacing between the pumping mechanism and said generally concave outer surface varies between said flat portion and said circular portion (Fig 6); an inlet tube (12) at least partially supported by said cassette (44) and having first and second ends and an outlet tube (14) at least partially supported by said cassette (42) and having first and second ends; wherein said compressible tube has a second end with said first end of said compressible tube coupled to said second end of said inlet tube (Fig 1, 6) and said second end of said compressible tube coupled to said first end of said outlet tube (Fig 1, 6); a first connector (44) for coupling said first end of said compressible tube to said second end of said inlet tube and a second connector (42) for coupling said second end of said compressible tube to said first end of said outlet tube; wherein said cassette defines an input channel (44) and an output channel (42) with each of said channels having a first open end at said front and a second open end at said rear (Fig 6); wherein said inlet tube, said outlet tube, and said compressible tube are separate tubes (Fig 1).

12. Claims 32-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Troutner et al (4692138). Troutner et al discloses a tube set (Fig 1) for use with a

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surgical pump and tool system, the surgical pump having a pumping mechanism for supplying irrigation fluid to a tool of the system, said tube set (Fig 1) including a compressible tube (211) having a first end and a cassette (Fig 1, 4) supporting said compressible tube; said cassette including a pumping wall (212) with an outer surface (212; Fig 4) having a generally concave shape wherein said compressible tube is disposed adjacent to said generally concave outer surface (212; Fig 4), said generally concave outer surface having an arcuate surface (212; Fig 2; portion in contact with rollers) that defines a circular portion and a transition surface (portion between portion contacting rollers and 204 where the surface becomes horizontal; Fig 2) that extends away from said arcuate surface and said circular portion defined by said arcuate surface, wherein said compressible tube extends from said first end and over said transition surface to said arcuate surface when the pumping mechanism engages said compressible tube (Fig 2); wherein said transition surface defines a flat portion (portion between portion contacting rollers and 204 where the surface becomes horizontal; Fig 2) such that spacing between the pumping mechanism and said generally concave outer surface varies between said flat portion and said circular portion (Fig 2); an inlet tube (34) at least partially supported by said cassette and having first and second ends and an outlet tube (35) at least partially supported by said cassette and having first and second ends; wherein said compressible tube has a second end with said first end of said compressible tube coupled to said second end of said inlet tube by a first connector (Fig 2; col 6, lns 7-9) and said second end of said compressible tube coupled to said first end of said outlet tube by a second connector (Fig 2; col 6, lns 18-21); wherein said

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cassette has a front, first and second spaced apart opposed sides that extend from said front, and a rear opposite said front that extends between said sides and said cassette substantially encloses said first and second connectors and said inlet and outlet tubes between said front and said rear (Fig 2, 4); wherein said cassette defines an input channel (209) and an output channel (channel adjacent to 209 corresponding with outlet tube 35) with each of said channels having a first open end at said front and a second open end at said rear (Fig 2); wherein said inlet tube is disposed in said input channel and extends out through said first open end of said input channel at said front (Fig 2) and said outlet tube is disposed in said output channel and extends out through said first open end of said output channel at said front (Fig 2); wherein said inlet tube, said outlet tube, and said compressible tube are separate tubes (Fig 2).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M. Gilbert whose telephone number is (571) 272-7216. The examiner can normally be reached on 8:30 am to 5:00 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571)272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrew Gilbert



**MICHAEL J. HAYES**  
**PRIMARY EXAMINER**